

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DENNIS R.,

Plaintiff,

V.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. C20-5836 RAJ

ORDER REVERSING DENIAL OF BENEFITS AND REMANDING FOR FURTHER ADMINISTRATIVE PROCEEDINGS

Plaintiff appeals denial of his applications for Supplemental Security Income and

Disability Insurance Benefits. Plaintiff contends the ALJ erred by discounting his testimony and three medical opinions. Dkt. 21. As discussed below, the Court **REVERSES** the Commissioner's final decision and **REMANDS** the matter for further administrative proceedings under sentence four of 42 U.S.C. § 405(g).

BACKGROUND

Plaintiff is 50 years old, has a high school education, and has worked as a display maker, customer complaint clerk and supervisor, and ticket agent. Dkt. 19, Admin. Transcript (Tr.) 33-34. Plaintiff applied for benefits in January 2018, alleging disability as of May 22, 2017. Tr. 15.

After conducting a hearing in July 2019, the ALJ issued a decision finding Plaintiff not

1 disabled. Tr. 15-35. In pertinent part, the ALJ found Plaintiff had the severe impairments of
2 lumbar spine degenerative disc disease and degenerative joint disease; right knee
3 chondromalacia and cysts, status post-surgery; left shoulder pain; major depressive disorder;
4 anxiety disorder; and post-traumatic stress disorder (PTSD). Tr. 17. The ALJ found Plaintiff
5 could perform simple, routine, light-exertion work, with occasional overhead reaching and
6 frequent handling/fingering with the left non-dominant upper extremity, and with occasional
7 interaction with coworkers and the public. Tr. 21.

8 **DISCUSSION**

9 This Court may set aside the Commissioner's denial of Social Security benefits only if
10 the ALJ's decision is based on legal error or not supported by substantial evidence in the record
11 as a whole. *Trevizo v. Berryhill*, 871 F.3d 664, 674 (9th Cir. 2017).

12 **A. Plaintiff's Testimony**

13 Where, as here, an ALJ determines a claimant has presented objective medical evidence
14 establishing underlying impairments that could cause the symptoms alleged, and there is no
15 affirmative evidence of malingering, the ALJ can only discount the claimant's testimony as to
16 symptom severity by providing "specific, clear, and convincing" reasons supported by
17 substantial evidence. *Trevizo*, 871 F.3d at 678. The ALJ discounted Plaintiff's testimony of
18 debilitating mental impairments and back, knee, and shoulder pain based on inconsistency with
19 the medical evidence, improvement with treatment, and his activities. Tr. 22-27.

20 **1. Medical Evidence**

21 "Contradiction with the medical record is a sufficient basis for rejecting a claimant's
22 subjective testimony." *Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1161 (9th Cir.
23 2008). However, a mere "lack of medical evidence cannot form the sole basis for discounting

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1 [symptom] testimony.” *Burch v. Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005). Here, evidence
2 the ALJ cited did not contradict Plaintiff’s testimony.

3 The ALJ cited a lack of “long-term hospitalizations or severe complications,” but failed
4 to explain how this contradicts Plaintiff’s testimony. Tr. 25. The ALJ gave no reason long-term
5 hospitalization would be expected based on Plaintiff’s testimony of, for example, isolation and
6 difficulty leaving his house. *See* Tr. 118. The ALJ cited “normal or stable gait” and found no
7 need for an assistive device, but this does not contradict Plaintiff’s testimony. Tr. 25. Plaintiff
8 testified he can walk for up to 20 minutes, not that he cannot walk without an assistive device.
9 Tr. 125. A normal gait walking across a doctor’s office does not contradict testimony of pain
10 and numbness after walking for 20 minutes. *Id.* The ALJ cited observations Plaintiff was in “no
11 acute distress,” but Plaintiff’s symptoms are chronic, not acute. Tr. 25. The ALJ cited Plaintiff’s
12 ability to “participate in physical therapy,” but failed to explain how participating in therapy
13 designed for people with physical impairments contradicts Plaintiff’s testimony. *Id.* Similarly,
14 the ALJ found Plaintiff was “an active participant in mental health counseling,” including
15 completing homework, but failed to explain how participating in therapy designed for people
16 with mental impairments contradicts Plaintiff’s testimony. *Id.*

17 Conflict with the medical evidence was not a clear and convincing reason to discount
18 Plaintiff’s testimony.

19 **2. Improvement with Treatment**

20 Impairments that can be “controlled effectively” by medication or treatment are not
21 considered disabling for purposes of determining eligibility for Social Security benefits. *See*
22 *Warre v. Comm’r of Soc. Sec. Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006). The ALJ cited a
23 treatment note showing Plaintiff’s shoulder and knee pain were “30% improved by PT and

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1 cortisone injection.” Tr. 639. This does not show Plaintiff’s impairments were controlled
2 effectively. Other records note some improvement, but none indicate Plaintiff’s symptoms were
3 fully relieved or otherwise contradict Plaintiff’s testimony. *See* Tr. 805 (pain “improved”).
4 “That a person who suffers from severe [symptoms] makes some improvement does not mean
5 that the person’s impairments no longer seriously affect her ability to function in a workplace.”
6 *Holohan v. Massanari*, 246 F.3d 1195, 1205 (9th Cir. 2001).

7 Improvement with treatment was not a clear and convincing reason to discount Plaintiff’s
8 testimony.

9 **3. Activities**

10 An ALJ may discount a claimant’s testimony based on daily activities that either
11 contradict her testimony or that meet the threshold for transferable work skills. *Orn v. Astrue*,
12 495 F.3d 625, 639 (9th Cir. 2007). “Only if the level of activity were inconsistent with
13 Claimant’s claimed limitations would these activities have any bearing on Claimant’s
14 credibility.” *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998).

15 The ALJ found Plaintiff’s testimony inconsistent with a treatment note reporting Plaintiff
16 “was going to start walking long distances.” Tr. 23. However, this goal, set during mental
17 health treatment, had a target date of over a year later. Tr. 1189 (“Start: 11/25/2017 … Target:
18 12/31/2018”). This treatment note does not indicate Plaintiff actually engaged in any activity
19 inconsistent with his testimony.

20 The ALJ listed several activities, including the ability to “move from one location to
21 another” and “provide information about his health,” but failed to explain how they contradicted
22 Plaintiff’s testimony. Tr. 26-27. The ALJ also provided a long description of driving a car,
23 including operating pedals and levers and focusing, but again failed to explain how it contradicts

1 Plaintiff's testimony. Tr. 27. Plaintiff participated in a "wellness walk" with his mental health
2 care group, but there is no indication he walked longer than he testified he could without breaks.
3 Tr. 899.

4 Conflict with activities was not a clear and convincing reason to discount Plaintiff's
5 testimony.

6 The Court concludes the ALJ erred by discounting Plaintiff's testimony without a clear
7 and convincing reason.

8 **B. Medical Opinions**

9 Because Plaintiff filed his claim after March 27, 2017, new regulations apply to the
10 ALJ's evaluation of medical opinion evidence. The ALJ must articulate and explain the
11 persuasiveness of an opinion based on "supportability" and "consistency," the two most
12 important factors in the evaluation. 20 C.F.R. §§ 404.1520c(a)-(b), 416.920c(a)-(b). The "more
13 relevant the objective medical evidence and supporting explanations presented" and the "more
14 consistent" with evidence from other sources, the more persuasive a medical opinion. *Id.* at
15 (c)(1)-(2). At the least, this appears to necessitate that an ALJ specifically account for the
16 legitimate factors of supportability and consistency in addressing the persuasiveness of a medical
17 opinion. The Court must, moreover, continue to consider whether the ALJ's analysis has the
18 support of substantial evidence. *See* 42 U.S.C. § 405(g) ("findings of the Commissioner of
19 Social Security as to any fact, if supported by substantial evidence, shall be conclusive").

20 **1. Treating Physician James G. Lenhart, M.D.**

21 In April 2019, based on knee and shoulder impairments, Dr. Lenhart opined Plaintiff
22 needed to elevate his leg for 10 minutes about every two hours, could stand/walk two hours and
23 sit two hours per day, would miss more than three days of work per month, and had upper

1 extremity limitations. Tr. 1171-73. The ALJ found Dr. Lenhart's opinions "unpersuasive" based
2 on inconsistency with medical evidence and Plaintiff's activities, unexplained limitations, and
3 internal inconsistency. Tr. 29.

4 **a) Medical Evidence**

5 Inconsistency with objective evidence in the medical record can be a valid reason for
6 rejecting the opinion of an examining doctor. *See Ford v. Saul*, 950 F.3d 1141, 1156 (9th Cir.
7 2020). Here, however, the only medical evidence the ALJ cited was "generally normal gait and
8 ability to walk, sit, and stand without the use of an assistive device." Tr. 29. A normal gait
9 across a doctor's office without an assistive device does not contradict an inability to stand/walk
10 more than two hours per day, as Dr. Lenhart opined. Tr. 1172. Conflict with medical evidence
11 was not a valid reason to discount Dr. Lenhart's opinions.

12 **b) Activities**

13 Conflict with a claimant's activities "may justify rejecting a treating provider's opinion."
14 *Ghanim v. Colvin*, 763 F.3d 1154, 1162 (9th Cir. 2014). Here, however, the ALJ provided the
15 same list of activities he cited to discount Plaintiff's testimony, and failed to explain how any of
16 them contradicted Dr. Lenhart's opinions. Tr. 29. Conflict with Plaintiff's activities was not a
17 valid reason to discount Dr. Lenhart's opinions.

18 **c) Lack of Explanation**

19 The ALJ found Dr. Lenhart failed to explain his opinion Plaintiff would miss at least
20 three days of work per month. Tr. 29. Although Dr. Lenhart did not explain his absenteeism
21 opinion in the form, the ALJ must also consider his treating records. Opinions "based on
22 significant experience with [the claimant] and supported by numerous records [are] entitled to
23 weight that an otherwise unsupported and unexplained check-box form would not merit...."

1 *Garrison v. Colvin*, 759 F.3d 995, 1013 (9th Cir. 2014). Dr. Lenhart's opinions were supported
2 by extensive clinical records. *See* Tr. 638-82, 817-75, 1127-70. These treatment records reveal
3 numerous abnormal clinical findings. *See, e.g.*, Tr. 644 (“Left shoulder … tenderness[,]”
4 Hawkin’s positive[,] Neer’s positive”), 657 (“Large multiloculated cystic lesion” on right knee
5 MRI), 863 (positive straight leg raise and Faber tests). The ALJ provided no reason these were
6 insufficient to support Dr. Lenhart’s opinions. Lack of explanation was not a valid reason to
7 discount Dr. Lenhart’s opinions.

8 **d) Internal Inconsistency**

9 The ALJ found Dr. Lenhart’s opined upper extremity (UE) limitations internally
10 inconsistent. Dr. Lenhart made a checkmark indicating Plaintiff “would not be able to use his
11 hands and arms at all for reaching, holding, handling or manipulating,” and a checkmark to
12 indicate this opinion applied to Plaintiff’s “[l]eft UE.” Tr. 1172. On the next page, Dr. Lenhart
13 made a checkmark indicating Plaintiff “would be able to use his hands and arms occasionally (up
14 to 1/3 of an 8 hour workday) for reaching, holding, handling or manipulating,” but failed to make
15 a checkmark indicating whether this limitation applied to Plaintiff’s “[r]ight,” “[l]eft,” or
16 “[b]oth” upper extremities. Tr. 1173. The ALJ apparently concluded Dr. Lenhart intended the
17 occasional limitation to apply to both upper extremities, which would contradict the opined
18 inability to use the left arm. Tr. 29. However, Dr. Lenhart did not make a checkmark indicating
19 “[b]oth UE’s.” Tr. 1173. Substantial evidence thus does not support the ALJ’s conclusion that
20 Dr. Lenhart intended to endorse two contradictory statements. Internal inconsistency was not a
21 valid reason to discount Dr. Lenhart’s opinions.

22 The Court recognizes the ambiguity created by Dr. Lenhart’s failure to checkmark one of
23 the three options provided. However, because this case must be remanded for reconsideration of
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1 Plaintiff's testimony in any case, the Court need not further address the ambiguity at present. On
2 remand, the ALJ may be evaluating a different record, as new evidence may be submitted that
3 impacts Dr. Lenhart's opinion. If not, the ALJ will have the opportunity to reconsider or clarify
4 his conclusion that Dr. Lenhart intended to opine two contradictory limitations.

5 The Court concludes the ALJ erred by discounting Dr. Lenhart's opinions.

6 **2. Examining Doctor W. Kefron McCaw, Psy.D.**

7 Dr. McCaw examined Plaintiff in October 2018 and, based on diagnoses of social anxiety
8 disorder and major depressive disorder, opined he would have marked limitations in maintaining
9 punctual attendance, learning new tasks, communicating and performing effectively, maintaining
10 appropriate behavior, completing a normal work day and work week, and goal-setting. Tr. 1123-
11 24.

12 The ALJ found Dr. McCaw's opinions "unpersuasive" based on inconsistency with
13 objective medical findings and Plaintiff's activities. Tr. 32. As the Commissioner notes, the
14 "ALJ also found more persuasive the opinions of the State Agency consultants." Dkt. 22 at 13.
15 The existence of conflicting opinions, however, is not by itself a reason to prefer one over the
16 other. The ALJ could only discount Dr. McCaw's opinions for valid reasons supported by
17 substantial evidence.

18 The ALJ did not identify any conflicting medical evidence, but simply referred to
19 "objective medical findings discussed previously in this decision." Tr. 32. Nothing in the ALJ's
20 decision obviously conflicts with Dr. McCaw's opinions, and the Commissioner fails to identify
21 any conflict. Conflict with the medical evidence was not a valid reason to discount Dr. McCaw's
22 opinions.

23 The ALJ provided the same list of activities he cited to discount Plaintiff's testimony and
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1 Dr. Lenhart's opinions, and failed to explain how any of them contradicted Dr. McCaw's
2 opinions. Tr. 32. Conflict with Plaintiff's activities was not a sufficient reason to discount Dr.
3 McCaw's opinions.

4 The Court concludes the ALJ erred by discounting Dr. McCaw's opinions.

5 **3. Examining Doctor Morgan L. McCormick, Psy.D.**

6 Dr. McCormick examined Plaintiff in May 2019 and, based on PTSD, opined Plaintiff
7 had marked limitations in remembering, concentrating for two hours, completing a normal work
8 day and work week, accepting supervision, and handling changes. Tr. 1396-1400. The ALJ
9 found Dr. McCormick's opinions "unpersuasive" based on the same activities discussed above,
10 but failed to explain how any of them contradicted Dr. McCormick's opinions. Tr. 33. This was
11 not a valid reason. The Court concludes the ALJ erred by discounting Dr. McCormick's
12 opinions.

13 **CONCLUSION**

14 For the foregoing reasons, the Commissioner's final decision is **REVERSED** and this
15 case is **REMANDED** for further administrative proceedings under sentence four of 42 U.S.C. §
16 405(g). On remand, the ALJ should reevaluate Plaintiff's testimony and the opinions of Dr.
17 Lenhart, Dr. McCaw, and Dr. McCormick; reassess the RFC as appropriate; and proceed to step
18 five as necessary.

19 DATED this 8th day of June, 2021.

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21

22 The Honorable Richard A. Jones
23 United States District Judge